IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7474 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DASRATHJI DAYAJI THAKOR

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 21/03/2000

ORAL JUDGEMENT

1. The District Magistrate, Ahmedabad, passed an order on August, 30, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Dasharathji Dahyaji Thakore, under the

provisions of the said Act.

2. The grounds of detention indicate that the detaining authority took into consideration four offences registered against the detenu under the Bombay Prohibition Act. The authority also considered statements of four anonymous witnesses and recorded a satisfaction that the fear expressed by the witnesses is genuine qua the petitioner and, therefore, powers under Section 9(2) of the PASA Act were required to be exercised by not disclosing the identity of the witnesses to the detenu. The authority considered possibility of resorting to less drastic remedies and came to conclusion that the petitioner is required under the PASA Act in order to immediately prevent him from pursuing his illegal and anti-social activities.

3. The petitioner/detenu challenges the order of detention on various counts. Ms. Patel submitted that the order of detention is vitiated due to improper exercise of powers under Section 9(2) of the PASA Act. She submitted that the statements have not been verified by the detaining authority. She has drawn attention of this Court to the grounds of detention wherein the detaining authority has also stated that the statements have been verified by Dy.S.P. Upon perusal of the statements, it is found that the statements have been verified by the Dy.S.P. and are not verified by the detaining authority and, therefore, according to Ms. Patel, the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He submitted that the detaining authority has relied upon the verification made by Dy.S.P. and, therefore, it cannot be said that the subjective satisfaction recorded by the detaining authority is improper.

5. Having regard to the rival side contentions, at the outset, it may be noted that, on perusal of the papers, it is clear that the detaining authority has himself not verified the statements and, as such, there is no question of the detaining being personally satisfied about the genuineness of the fear expressed by the witnesses qua the petitioner. The language employed in the grounds of detention indicate that verification by Dy.S.P. was not at the behest of or upon the direction of the District Magistrate and, therefore, the District Magistrate/the detaining authority has only considered the verification of the statements by the Dy.S.P., which was placed before him. As such, the detaining authority

had no material for arriving at an independent subjective satisfaction for the need for exercise of powers under Section 9(2) of the PASA Act. The detaining authority has not filed any affidavit in reply and, therefore also, this Court is at loss to appreciate how a subjective satisfaction is recorded by the detaining authority in absence of personal verification and in absence of verification through some responsible officer at the behest of the detaining authority. There appears not any independent report from Dy.S.P. about genuineness of the fear expressed and the verification, if read, indicates only verification of the fear expressed by the witnesses in the main statements recorded. Under these circumstances, the subjective satisfaction indicated by the detaining authority for exercising powers under Section 9(2) of the PASA Act is vitiated. This will have an adverse bearing on the right of the detenu of making an effective representation as envisaged under Article 22(5) of the Constitution. The detenu's right of making an effective representation having been infringed thereby, the detention would stand vitiated.

6. There is another aspect also. The verification was done by the Dy.S.P. on 1.7.1999 and the order in question was passed on August 30, 1999. There is a gross delay of almost two months. There is a delay in even sending the proposal by the D.S.P., which is sent on August 20, 1999, i.e. nearly after one month and 20 days after verification of the statements by Dy.S.P. The satisfaction for urget need for detention for preventing the detenu from continuing his activities cannot be considered to be genuine and, therefore also, the order stands vitiated. The petition, therefore, deserves to be allowed.

7. In view of the above discussion, the petition is allowed. The impugned order of detention dated 30th August, 1999, passed against the detenu is hereby quashed. The detenu-Dasharathji Dahyaji Thakore is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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